
Emergency Rules

Title 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 10—Voting Machines (Electronic)

EMERGENCY RULE

15 CSR 30-10.140 Electronic Ballot Tabulation—Counting Preparation and Logic and Accuracy Testing (DREs and Precinct Counters)

PURPOSE: This rule provides procedures in connection with the preparation of Direct Recording Electronic voting systems (DREs) and Optical Scan Precinct Count voting systems (Precinct Counters) for vote recording and tabulation, including equipment and program preparation and pre-election logic and accuracy testing and certification.

EMERGENCY STATEMENT: The Help America Vote Act (HAVA) of 2002, requires each state to enact laws to improve election administration, to provide accessible voting stations and to provide notice to a voter who has overvoted and an opportunity to correct their ballot. As part of the Elections Division program for compliance with HAVA and the equipment procurement process, the secretary of state (SOS) reviewed existing rules regarding use of electronic voting systems. This review revealed that the current rules did not include any specific procedures for testing and use of DREs and Precinct Counters. As the local jurisdictions are in the process of implementing their HAVA compliant voting systems, it has become apparent that all jurisdictions will be using DREs for the first time and the vast majority of voters in the state of Missouri will be using Precinct Counters, many of them for the first time. The increased numbers of voters and jurisdictions using DREs and Precinct Counters makes uniform procedures for their testing and use crucial to the improvement of election administration. As the first election in 2006 approaches that involves all local election authorities using DREs and Precinct Counters, many for the first time (August 8, 2006), there is a compelling governmental interest for uniform procedures for their testing and use.

The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Office of the Secretary of State believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed June 21, 2006, effective July 1, 2006, expires February 22, 2007.

- (1) Election authorities in jurisdictions in which DREs or Precinct Counters are used shall be responsible for ensuring that the devices accurately record and count all proper votes cast and that the systems comply with all applicable state statutes and rules.
- (2) The election authority shall be responsible for taking all steps necessary to ensure that the DREs and Precinct Counters operate properly at the time of the pre-election public logic and accuracy test and during the tabulation of votes on the day of the election.
- (3) The election authority shall be responsible for making necessary arrangements for a backup ballot tabulating method.
- (4) The election authority shall be responsible for providing a duplicate of the counting program for the computer system on which the ballot tabulation is to be done, regardless of the backup counting system used.
- (5) The election authority shall be responsible for appointing bipartisan accuracy certification team(s) pursuant to 15 CSR 30-10.040(5) and (6).

(6) Prior to election day the election authority shall supervise a public logic and accuracy test of the DREs and Precinct Counters conducted by the accuracy certification team(s).

(A) The logic and accuracy test shall be open to any member of the public, and the election authority, by some appropriate method, shall notify the public of the time and date of the test.

(B) Persons, other than candidates and other individuals required to be notified under section 115.233, RSMo, wishing to participate in the testing process, in the manner provided in state law and this rule, shall file a written request with the election authority at least twenty-four (24) hours prior to the publicized beginning of the logic and accuracy test.

(C) The election authority shall cause each DRE and Precinct Counter to be programmed for the ballot style for the precinct(s) at which the DRE or Precinct Counter will be used and the programmed memory card assigned to that unit shall be inserted. After programming the DREs and Precinct Counters, each unit shall have such internal diagnostic tests performed as shall be directed by the election authority. Following the completion of the diagnostic tests, all units shall have an internal logic and accuracy test performed using the programmed ballot style for the election and precinct(s) for which the unit is being prepared and shall test the conditions described in 15 CSR 30-10.040(7)(C). In addition, for DREs and electronically-assisted ballot marking devices, the test script shall include votes cast using a combination of audio and touch-screen methods.

(D) The accuracy certification team(s) shall compare the results of the electronic test to the data entered and to the results from a manual count of the paper cast vote records for the DREs and the results of a manual count of the optical scan paper ballots for the Precinct Counters. If the results are incorrect, then changes or corrections will be made to the programming until an errorless count is made. A unit shall not be used on election day until an errorless count is made on that unit.

(E) After the team(s) is satisfied that the equipment is tabulating the votes properly, each candidate on the ballot or any representative of a group which has notified the election authority pursuant to 15 CSR 30-10.140(7)(B) may inspect the paper audit trail for the DRE and inspect and manually recount the optical scan test deck.

(F) If any unit fails any of the diagnostic or logic and accuracy tests, the unit shall not be used in an election until such unit is repaired, reprogrammed and inspected and found capable of proper functioning and passes the diagnostic and logic and accuracy tests. Upon the successful completion of the logic and accuracy test, the counters shall be cleared of any accumulated vote totals for the election and a zero tape run to verify that the vote registers in the unit are set at zero. The accuracy certification team(s) shall verify that the vote registers are set at zero and make a corresponding notation on the certification form to document the successful logic and accuracy testing and the unit shall be configured for voting. The memory card shall be sealed into the unit to prevent unauthorized access using a controlled serialized seal that is tamper resistant and resistant to inadvertent breakage and the unit shall then be securely closed in its case and a numbered seal placed on its case such that the case may not be opened until and unless the seal is broken. If the unit does not have a case, the unit shall be sealed with a numbered seal placed on the unit such that the unit may not be used for voting until and unless the seal is broken. The numbers on the seals shall be entered into verifiable seal logs.

(G) The election authority shall make a certification for each DRE and Precinct Counter stating the serial number of the unit, the number on the system counter of the unit, the number on the seal with which the unit is sealed, and that the election counter and each vote register on the unit was set at zero. The case shall be appropriately labeled with the name of the polling location in which the unit is to be used and the serial number of the unit. The certification shall be

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retained with the records for such election and shall be stored for the same period of time and in the same manner as required by law for other election records.

(H) All logic and accuracy test materials shall be sealed in a tamperproof container securely sealed in such a manner that if the container is opened, the seal will be broken beyond repair. All members of the accuracy certification team(s) shall verify, by signature or initials, the date and time the container was sealed on a certificate placed on the outside of the container. The election authority shall have custody of the logic and accuracy test materials, including the program, until called for by the accuracy certification team.

(I) After being prepared for voting, each DRE and Precinct Counter shall be safely and securely stored until such time as the unit is transported to the polling location in which such unit is to be used.

*AUTHORITY: section 115.225, RSMo Supp. 2005. Emergency rule filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. An emergency rule and proposed rule covering this same material will be published in the August 1, 2006 issue of the **Missouri Register**.*